

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMPLETON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110477

ORDER DENYING DISTRICT'S
SECOND MOTION TO DISMISS AND
MOTION TO CONTINUE

On November 14, 2013, Student filed a request for due process hearing (complaint) alleging that District had denied Student a free appropriate public education (FAPE) by failing to provide Student's parents (Parents) with an assessment plan, failing to assess Student, and failing in its child-find duties toward him. On December 18, 2013, District filed a Motion to Dismiss, arguing that since the filing of the complaint, District had presented an assessment plan to Parents who had signed it. Assessments were ongoing and an individualized educational program (IEP) meeting scheduled in January. On these facts, District argued, it would be legally impossible to determine that Student, who had not yet been found eligible for special education and related services, had been denied a FAPE as a result of District's alleged procedural errors. In the alternative, District moved to continue the hearing until after the January IEP meeting, arguing that it might render the case moot. On December 19, 2013, Student opposed. As discussed below, District's Motion to Dismiss and Motion to Continue are both denied.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, the Motion to Dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the Motion to Dismiss is denied.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule

3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for continuance, and considered all relevant facts and circumstances. The request is opposed by Student, and is denied. The pendency of the January IEP meeting is not good cause to continue the hearing, as it may or may not result in a resolution of the matters raised in the complaint, to which Student is entitled to a timely resolution. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: December 27, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings